

Department of Community Planning and Economic Development – Planning Division
Variances
BZZ – 5529

Date: May 24, 2012

Applicant: Neal Shah

Address of Property: 3840 Upton Avenue South

Contact Person and Phone: Steven Behnke, Donnay Homes (612) 290-5570

Planning Staff and Phone: Janelle Widmeier, (612) 673-3156

Date Application Deemed Complete: May 1, 2012

End of 60-Day Decision Period: June 30, 2012

Ward: 13 **Neighborhood Organization:** Linden Hills

Existing Zoning: R1 Single-Family Residence District

Proposed Use: New single-family dwelling

Concurrent Review:

- Variance to increase the maximum allowed height from 2.5 stories to 3 stories (includes the basement level).
- Variance to increase the maximum floor area ratio (FAR) from 0.5 to 0.772 (includes the basement level).
- Variance to reduce the south interior side yard from 6 feet to 4 feet 4 inches to allow a landing and stairs that extends more than 4 feet above the adjacent natural grade.

Applicable zoning code provisions: Chapter 525, Article IX Variances, specifically Section 525.520 (1) “To vary the yard requirements, including permitted obstructions into required yards not allowed by the applicable regulations;” (3) “To vary the gross floor area, floor area ratio and seating requirements of a structure or use;” and (4) “Unless otherwise controlled by conditional use permit, to vary the height requirements for any structure, except signs, provided that the total floor area ratio on the site shall not be exceeded, and provided further that the maximum height of any accessory structure shall not exceed sixteen (16) feet or sixty (60) percent of the height of the structure to which it is accessory, whichever is greater.”

Background: The applicant is proposing to build a new single-family dwelling located at the property of 3840 Upton Avenue South. The site is currently vacant. The previous dwelling located on the property was demolished earlier this year. The proposed dwelling will have two stories above a full basement. The grade of the subject site is proposed to be modified with the construction of the new dwelling.

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The maximum number of stories allowed in the R1 district is 2.5 stories. In the zoning code, a story is defined as “That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, or fourteen (14) feet, whichever is less, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor surface directly above a basement, cellar or unused under floor space is more than six (6) feet above grade, for more than fifty (50) percent of the total perimeter, or is more than twelve (12) feet above grade at any point, such basement, cellar or unused under floor space shall be considered a story.” The proposed first floor level would have two elevations because the floor steps down from the front of the house to the back of the house. The zoning administrator has determined that, for the purposes of measuring the basement exposure above grade, the first floor elevation at the front of the house is used for the entire perimeter. This is to prevent circumvention of the intent of the ordinance. For more than 50 percent of the total perimeter, the finished first floor surface is more than 6 feet above the adjacent grade. Therefore the basement is considered a story and a variance is required to allow a 3-story single-family dwelling.

In the R1 district, the maximum FAR is 0.5 for a single-family dwelling. The gross floor area (GFA) does not include the following:

- (1) Detached accessory structures.
- (2) Up to 250 square feet of any attached accessory use designed or intended to be used for the parking of vehicles.
- (3) Open porches.
- (4) The basement floor area if the finished floor of the first story is 4 feet or less from natural grade for more than 50 percent of the total perimeter.
- (5) Half story floor area.

An attached garage is proposed and the finished floor of the first story is more than 4 feet from natural grade for more than 50 percent of the perimeter. As with determining the number of stories, the finished first floor elevation at the front of the house is used for the entire perimeter. With the inclusion of the basement level and part of the attached garage, the proposed FAR is 0.772. Therefore a variance is required to increase the maximum FAR.

The minimum interior side yard requirement is 6 feet in the R1 district. Stairs not exceeding 4 feet in width, and entrance landings not exceeding 16 square feet in area and not more than the height of the level of the first floor or 4 feet above the average level of the adjoining natural grade whichever is less, and handrails for such stairs not more than 3 feet in height and not more than 50 percent opaque, not including permanently roofed porches are a permitted obstruction. In the south interior side yard, the proposed stairs and landing would comply with these requirements, except they would extend more than 4 feet above the adjacent natural grade. Therefore a variance is required to reduce the interior side yard requirement.

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Compliance with Other R1 District Code Requirements

Requirement	Allowed	Proposed
Minimum Lot Area	6,000 sq. ft.	5,750 sq. ft. ¹
Minimum Lot Width	50 ft.	49.8 ft. ¹
Maximum Building Height ²	30 ft.	27 ft.
Maximum Lot Coverage	50%	34.9%
Maximum Impervious Surface	65%	50%
Minimum Front Yard	27 ft. established setback for dwelling	27 ft. (open porch is a permitted obstruction)
Minimum Interior Side Yard (North)	6 ft. for dwelling	6 ft.
Minimum Interior Side Yard (South)	6 ft. for dwelling	6 ft.
Minimum Rear Yard	6 ft. for dwelling	32 ft.

The applicant will need to obtain all necessary approvals and permits prior to construction. In addition to the requested variances, the applicant will also need to obtain zoning approvals for a site plan review required by Chapter 530 Site Plan Review in the zoning code. This is an administrative review. A site plan review application had been submitted for this dwelling, but was denied because the proposal did not comply with the height, FAR and side yard requirements and therefore needed variances. Upon review of the application, it was determined that the dwelling qualified for 19 of the possible 24 points available for the site plan review. A minimum of 15 is required. The 19 points were for a full basement, quality exterior materials, at least 20 percent windows on the street facing building elevation, at least 10 percent windows on the remaining elevations, a 6/12 roof pitch, an open covered front porch, and a deciduous tree in the front yard.

Correspondence from the neighborhood group was received and is attached to this report. They do not oppose the variance requests. Staff will forward additional comments, if any are received, at the Board of Adjustment meeting.

¹ For nonconforming lots, Section 531.100 of the zoning code authorizes the establishment of a single-family dwelling on a lot of record existing on the effective date of this ordinance (February of 1995) in the R1 through R4 Districts and OR1 District.

² As defined in section 520.160 of the zoning code, height is the vertical distance from the natural grade measured either at the curb level or at a point ten (10) feet away from the front center of the structure or building, whichever is closer, to the average distance between the eave edge and the ridge level for gable, hip and gambrel roofs.

VARIANCE: to increase the maximum height of a single-family dwelling from 2.5 stories to 3 stories.

Findings as Required by the Minneapolis Zoning Code for a Variance:

- 1. Practical difficulties exist in complying with the ordinance because of circumstances unique to the property. The unique circumstances were not created by persons presently having an interest in the property and are not based on economic considerations alone.**

The total perimeter of the proposed house footprint equals 188 feet 8 inches. The finished floor surface directly above a basement that is more than 6 feet above grade, for more than 50 percent of the total perimeter is considered a story. Therefore the finished floor above the basement must be less than 6 feet above the adjacent grade for less than 94 feet 4 inches to not be considered a story. The finished surface of the first floor based on the front elevation is more than 6 feet above the adjacent grade for 102 feet, or 54.1 percent, of the perimeter. The height limit for stories is measured from the proposed grade rather than natural grade; however, the existing grade changes 10 feet from the front of the site to the back of the site. Most of the grade change occurs where the house is proposed to be located. These circumstances have not been created by the applicant.

- 2. The property owner or authorized applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan.**

Building bulk regulations are established in order to assure that the scale and form of new development or expansion will occur in a manner most compatible with the surrounding area. Comprehensive plan policies call for single-family infill development to reflect the setbacks, orientation, pattern, materials, height and scale of surrounding dwellings. The subject site is located in a primarily single-family neighborhood. On the 3800 block of Uptown Avenue South, the size of dwellings varies. There is also a mix of new and older dwellings. The newer residences tend to be larger in scale. On the west side of Upton Avenue where the subject site is located, most of the dwellings have walk-out basements due to the significant grade change. As measured in feet, the height of the proposed single-family dwelling would be less than the 30 foot maximum at 27 feet and will appear to be a two-story dwelling as viewed from Upton Avenue. The building would also comply with all minimum yard and maximum lot coverage regulations.

- 3. The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.**

The granting of the variance should have little effect on surrounding properties and will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties. Newer residences in the immediate area tend to be larger in scale. The proposed dwelling would be larger in scale than older homes in the immediate area, but it would not appear to be a 3-story building from the street. To eliminate the need for the variance, the perimeter would need to be reduced by 7 feet 8 inches where the basement walls are exposed for more than 6 feet above the adjacent grade. Reducing the footprint by this amount would likely reduce the size of the tuck-under garage and basement family room, but would not reduce the

building bulk above the basement level. A roof and an outdoor terrace would be located above these spaces.

Findings required by the Minneapolis Zoning Code for increasing the maximum height:

1. Access to light and air of surrounding properties.

The increase in height would likely have no effect on the access to light and air of surrounding properties. As measured in feet, the height of the proposed single-family dwelling would be less than the 30 foot maximum at 27 feet and will appear to be a two-story dwelling as viewed from Upton Avenue. The building would also comply with all minimum yard and maximum lot coverage regulations.

2. Shadowing of residential properties, significant public spaces, or existing solar energy systems.

Shadowing of the adjacent residential property should not be more significant than a building that would be considered two stories by the zoning code. The proposed dwelling would be located 6 feet from the interior side lot line. The first floor elevations would be within one foot of each other. As measured in feet, the height of the proposed single-family dwelling would be less than the 30 foot maximum at 27 feet and will appear to be a two-story dwelling as viewed from Upton Avenue. There are not any existing significant public spaces directly adjacent to the site. Staff is not aware of any existing solar energy systems that would be affected by shadowing.

3. The scale and character of surrounding uses.

The subject site is located in a primarily single-family neighborhood. On the 3800 block of Uptown Avenue South, the size of dwellings varies. There is also a mix of new and older dwellings. The newer residences tend to be larger in scale. On the west side of Upton Avenue where the subject site is located, most of the dwellings have walk-out basements due to the significant grade change. On the east side of Upton Avenue, the dwellings are significantly elevated above street level.

4. Preservation of views of landmark buildings, significant open spaces or water bodies.

The building should not significantly block views of landmark buildings, significant open spaces, or bodies of water.

VARIANCE: to increase the maximum FAR from 0.5 to 0.772.

Findings as Required by the Minneapolis Zoning Code for a Variance:

1. Practical difficulties exist in complying with the ordinance because of circumstances unique to the property. The unique circumstances were not created by persons presently having an interest in the property and are not based on economic considerations alone.

The total perimeter of the proposed house footprint equals 188 feet 8 inches. If the finished floor surface directly above a basement is more than 4 feet above natural grade, for more than 50 percent

of the total perimeter, then the basement floor area is included in the gross floor area of the dwelling used to calculate the proposed FAR. The finished surface of the first floor based on the front elevation is more than 4 feet above the adjacent natural grade for 125 feet, or 66.3 percent, of the perimeter. Therefore the basement level is included in the calculations to determine gross floor area. The existing grade changes 10 feet from the front of the site to the back of the site. Most of the grade change occurs where the house is proposed to be located exposing more of the basement level walls. The proposed dwelling exceeds the maximum FAR because the basement floor area is included in the GFA calculations. If the basement were not required to be included in the GFA, the proposed FAR would be 0.47. These circumstances have not been created by the applicant.

2. The property owner or authorized applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan.

In general, building bulk regulations are established in order to assure that the scale and form of new development or expansion will occur in a manner most compatible with the surrounding area. Comprehensive plan policies call for single-family infill development to reflect the setbacks, orientation, pattern, materials, height and scale of surrounding dwellings. In calculating the gross floor area of a single-family dwelling, the purpose of measuring the finished first floor level from natural grade is to prevent the mounding of soil to allow for a structure to be taller or larger than the ordinance would normally allow.

The applicant is proposing to increase the grade from the sidewalk to where the front door will be located. The proposed first floor elevation at the front of the dwelling is within one foot of the existing first floor elevations of the adjacent dwellings to the north and south of the subject property. The proposed building will appear to be a two-story dwelling as viewed from Upton Avenue.

Restricting changes to the natural grade also helps to minimize runoff to surrounding properties due to grade changes. The applicant is proposing to modify the natural grade to match the grades on the adjacent property in order to prevent stormwater runoff from draining towards the proposed foundation walls. The Public Works Department has reviewed the grading plan. No issues were identified with the proposed grading and City records indicate that there are good soils in this location. With the proposed grading and downspout/leader locations, the management of the stormwater runoff should occur on-site. The applicant has also indicated that the sump pump discharge would be on the north side of the dwelling. It would be controlled to prevent water from spraying out. Given the grades and soils type in the area, they do not expect the pump to operate with any frequency.

3. The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.

The granting of the variance should have little effect on surrounding properties and will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties. The proposed first floor elevation at the front of the dwelling is within one foot of the existing first floor elevations of the adjacent dwellings to the north and south of the

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subject property. The proposed building will appear to be a two-story dwelling as viewed from Upton Avenue. If the basement were not required to be included in the GFA, the proposed FAR would be 0.47. The applicant is also proposing to match the grade of the adjacent properties. The proposed grade modifications should not affect the adjacent properties.

VARIANCE: to reduce the south interior side yard from 6 feet to 4 feet 4 inches to allow a landing and stairs that extends more than 4 feet above the adjacent natural grade.

Findings as Required by the Minneapolis Zoning Code for a Variance:

- 1. Practical difficulties exist in complying with the ordinance because of circumstances unique to the property. The unique circumstances were not created by persons presently having an interest in the property and are not based on economic considerations alone.**

The grade changes 10 feet from the front of the site to the back of the site. Most of the grade change occurs towards the middle of the site where the house is proposed to be located. The proposed stairs and landing will provide access to a terrace on the first floor level. They would be located up to 6 feet above the adjacent natural grade.

- 2. The property owner or authorized applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan.**

In general, yard controls are established to provide for the orderly development and use of land and to minimize conflicts among land uses by regulating the dimension and use of yards in order to provide adequate light, air, open space and separation of uses. Policies of the comprehensive plan also support the purpose of the yard ordinances. The intent of the ordinance limiting the height of the landing and stairs is to prevent stairs located in a side yard to extend up to a second floor level or higher. The proposed stairs and landing will provide access to a terrace on the first floor level. They would be located up to 6 feet above the adjacent natural grade. The distance between the stairs and the side lot line would leave sufficient room for access to the side yard without crossing the property line. The request is reasonable and in keeping with the intent of the ordinance and the comprehensive plan.

- 3. The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.**

Granting the variance would likely have little effect on surrounding properties and the character of the area or the general public and would not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties. The proposed stairs and landing will provide access to a terrace on the first floor level. They would be located up to 6 feet above the adjacent natural grade. The distance between the stairs and the side lot line would leave sufficient room for access to the side yard without crossing the property line.

RECOMMENDATION

Recommendation of the Community Planning and Economic Development Department – Planning Division for the Variance:

The Department of Community Planning and Economic Development – Planning Division recommends that the Board of Adjustment adopt the above findings and **approve** the variance to increase the maximum allowed height of a single-family dwelling from 2.5 stories to 3 stories (includes the basement level) for the property located at 3840 Upton Avenue South, subject to the following condition:

1. The height of the house shall not exceed 27 feet.

Recommendation of the Community Planning and Economic Development Department – Planning Division for the Variance:

The Department of Community Planning and Economic Development – Planning Division recommends that the Board of Adjustment adopt the above findings and **approve** the variance to increase the maximum floor area ratio of a single-family dwelling from 0.5 to 0.772 (includes the basement level) for the property located at 3840 Upton Avenue South, subject to the following condition:

1. Department of Community Planning and Economic Development—Planning Division staff review and approval of the final site/grading/drainage plan, building plans and elevations.

Recommendation of the Community Planning and Economic Development Department – Planning Division for the Variance:

The Department of Community Planning and Economic Development – Planning Division recommends that the Board of Adjustment adopt the above findings and **approve** the variance to reduce the south interior side yard from 6 feet to 4 feet 4 inches to allow a landing and stairs that extends more than 4 feet above the adjacent natural grade for the property located at 3840 Upton Avenue South.

Attachments:

1. Applicant's statement of proposed use and findings
2. Correspondence
3. Zoning map
4. Plans
5. Photos